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HOUSE BILL 1185

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY W. SANDEL

AN ACT

RELATING TO CORRECTIONAL FACILITIES FINANCING; AUTHORIZING THE  
ISSUANCE OF SEVERANCE TAX BONDS AND NEW MEXICO FINANCE AUTHORITY  
REVENUE BONDS FOR STATE CORRECTIONAL FACILITIES; CREATING A  
FUND; PROVIDING FOR DISTRIBUTION OF CERTAIN COUNTY GROSS  
RECEIPTS TAX REVENUES AND GOVERNMENTAL GROSS RECEIPTS TAX  
REVENUES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
REPEALING A SECTION OF LAWS 1995; MAKING APPROPRIATIONS;  
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. LEGISLATIVE FINDINGS-- PURPOSE. --

A. The legislature recognizes that New Mexico's  
correctional facilities are seriously overcrowded and cannot  
accommodate the anticipated growth in correctional facility  
populations. This critical shortage of correctional facilities,

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1 primarily for adult male offenders, poses a serious threat to  
2 the public welfare and safety of New Mexicans. To address this  
3 emergency, the state must immediately construct the additional  
4 correctional facilities necessary to meet this urgent need.

5 B. It is the purpose of this act to provide the  
6 financing necessary for the corrections department to construct  
7 as soon as possible two additional state correctional facilities  
8 for adult male offenders.

9 Section 2. A new section of the New Mexico Finance  
10 Authority Act is enacted to read:

11 "[NEW MATERIAL] CORRECTIONAL FACILITIES FINANCING FUND  
12 CREATED. --

13 A. The "correctional facilities financing fund" is  
14 created within the authority. The fund shall be administered by  
15 the authority as a separate account. The authority may create  
16 such subaccounts as the authority deems necessary to carry out  
17 the purposes of the fund. The authority is authorized to  
18 establish procedures as required to administer the fund in  
19 accordance with the New Mexico Finance Authority Act.

20 B. The correctional facilities financing fund shall  
21 consist of money appropriated, distributed or otherwise  
22 allocated to the fund for the purpose of financing correctional  
23 facilities in Lea and Guadalupe counties.

24 C. Money appropriated to pay administrative costs  
25 and money available for administrative costs from other sources

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1 shall not be deposited in the correctional facilities financing  
2 fund but shall be deposited in a separate account of the  
3 authority and may be used by the authority to meet  
4 administrative costs of the authority. The authority is  
5 authorized to deduct administrative costs annually from the fund  
6 prior to making the transfer required by Subsection F of this  
7 section.

8 D. Money in the correctional facilities financing  
9 fund not needed for immediate disbursement, including any money  
10 held in reserve, may be deposited with the state treasurer for  
11 short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or  
12 may be invested in direct and general obligations of or  
13 obligations fully and unconditionally guaranteed by the United  
14 States, obligations issued by agencies of the United States,  
15 obligations of this state or any political subdivision of the  
16 state, interest-bearing time deposits, commercial paper issued  
17 by corporations organized and operating in the United States and  
18 rated "prime" quality by a national rating service or as  
19 otherwise provided by the trust indenture or bond resolution, if  
20 money in the fund is pledged for or to secure payment of bonds  
21 issued by the authority.

22 E. The authority shall establish fiscal controls and  
23 accounting procedures that are sufficient to assure proper  
24 accounting for correctional facilities financing fund payments,  
25 disbursements and balances.

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1           F. At the end of any fiscal year, after all debt  
2 service charges, replenishment of reserves and administrative  
3 costs on all outstanding revenue bonds, notes or other  
4 obligations payable from the correctional facilities financing  
5 fund are satisfied, the balance remaining in the correctional  
6 facilities financing fund shall be transferred by the authority  
7 to the public project revolving fund for public projects as  
8 authorized by the legislature pursuant to the New Mexico Finance  
9 Authority Act.

10           G. Local matching funds from the city of Hobbs and  
11 Lea county that are deposited in the correctional facilities  
12 financing fund are appropriated to the corrections department  
13 for expenditure for the state correctional facility project in  
14 Lea county and shall be distributed to the corrections  
15 department for that purpose upon the department's certification  
16 of the need for the funds. "

17           Section 3. Section 6-21-6.1 NMSA 1978 (being Laws 1994,  
18 Chapter 145, Section 2, as amended) is amended to read:

19           "6-21-6.1. PUBLIC PROJECT REVOLVING FUND--APPROPRIATIONS  
20 TO OTHER FUNDS. --

21           A. The authority and the department of environment  
22 may enter into a joint powers agreement pursuant to the Joint  
23 Powers Agreements Act for the purpose of describing and  
24 allocating duties and responsibilities with respect to creation  
25 of an integrated loan and grant program to be financed through

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1 issuance of bonds payable from the public project revolving  
2 fund. The bonds may be issued in installments or at one time by  
3 the authority in amounts authorized by law. The net proceeds  
4 may be used for purposes of the Wastewater Facility Construction  
5 Loan Act, the Rural Infrastructure Act or the Solid Waste Act.

6 B. Public projects funded pursuant to the Wastewater  
7 Facility Construction Loan Act, the Rural Infrastructure Act or  
8 the Solid Waste Act shall not require specific authorization by  
9 law as required in Sections 6-21-6 and 6-21-8 NMSA 1978.

10 C. At the end of each fiscal year, after all debt  
11 service charges, replenishment of reserves and administrative  
12 costs on all outstanding bonds, notes or other obligations  
13 payable from the public project revolving fund are satisfied, an  
14 aggregate amount not to exceed thirty-five percent of the  
15 governmental gross receipts tax proceeds distributed pursuant to  
16 Paragraph (1) of Subsection B of Section 7-1-6.38 NMSA 1978 to  
17 the public project revolving fund in the preceding fiscal year  
18 less all debt service charges and administrative costs of the  
19 authority paid in the preceding fiscal year on bonds issued  
20 pursuant to this section may be appropriated by the legislature  
21 from the public project revolving fund to the following funds  
22 for local infrastructure financing:

23 (1) the wastewater facility construction loan  
24 fund for purposes of the Wastewater Facility Construction Loan  
25 Act;

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1 (2) the rural infrastructure revolving loan  
2 fund for purposes of the Rural Infrastructure Act; or

3 (3) the solid waste facility grant fund for  
4 purposes of the Solid Waste Act.

5 D. The authority and the department of environment  
6 in coordination with the New Mexico finance authority oversight  
7 committee may recommend annually to each regular session of the  
8 legislature amounts to be appropriated to the funds listed in  
9 Subsection C of this section for local infrastructure  
10 financing. "

11 Section 4. Section 6-24-24 NMSA 1978 (being Laws 1995,  
12 Chapter 155, Section 24) is amended to read:

13 "6-24-24. DISPOSITION OF REVENUE. --

14 A. As nearly as practical, an amount equal to at  
15 least fifty percent of the gross annual revenues from the sale  
16 of lottery tickets shall be returned to the public in the form  
17 of lottery prizes.

18 B. The authority shall transmit all net revenues to  
19 the state treasurer, who shall deposit sixty percent of the  
20 revenues in the public school capital outlay fund for  
21 expenditure pursuant to the provisions of the Public School  
22 Capital Outlay Act and forty percent in the lottery tuition  
23 fund. Estimated net revenues shall be transmitted monthly to  
24 the state treasurer for deposit in the funds, provided the total  
25 amount of annual net revenues for the fiscal year shall be

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1 transmitted no later than August 1 each year.

2 C. In determining net revenues, operating expenses  
3 of the lottery include all costs incurred in the operation and  
4 administration of the lottery and all costs resulting from any  
5 contracts entered into for the purchase or lease of goods or  
6 services required by the lottery, including but not limited to,  
7 the costs of supplies, materials, tickets, independent audit  
8 services, independent studies, data transmission, advertising,  
9 promotion, incentives, public relations, communications,  
10 commissions paid to lottery retailers, printing, distribution of  
11 tickets, purchases of annuities or investments to be used to pay  
12 future installments of winning lottery tickets, debt service and  
13 payment of any revenue bonds issued, contingency reserves,  
14 transfers to the reserve fund and any other necessary costs  
15 incurred in carrying out the provisions of the New Mexico  
16 Lottery Act.

17 D. An amount up to two percent of the gross annual  
18 revenues shall be set aside as a reserve fund to cover bonuses  
19 and incentive plans for lottery retailers, special promotions  
20 for retailers, purchasing special promotional giveaways,  
21 sponsoring special promotional events, compulsive gambling  
22 rehabilitation and such other purposes as the board deems  
23 necessary to maintain the integrity and meet the revenue goals  
24 of the lottery. The board shall report annually to the governor  
25 and each regular session of the legislature on the use of the

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1 money in the reserve fund. Any balance in excess of fifty  
2 thousand dollars (\$50,000) at the end of any fiscal year shall  
3 be transferred to the lottery tuition fund.

4 E. As used in this section, "gross annual revenues"  
5 does not include governmental gross receipts tax collected or  
6 paid."

7 Section 5. Section 7-1-6.13 NMSA 1978 (being Laws 1983,  
8 Chapter 211, Section 18, as amended) is amended to read:

9 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION  
10 GROSS RECEIPTS TAXES.--

11 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978  
12 shall be made to each county for which the department is  
13 collecting a local option gross receipts tax imposed by that  
14 county in an amount, subject to any increase or decrease made  
15 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net  
16 receipts attributable to the local option gross receipts tax  
17 imposed by that county, less any deduction for administrative  
18 cost determined and made by the department pursuant to the  
19 provisions of the act authorizing imposition by that county of  
20 the local option gross receipts tax.

21 B. An amount shall be deducted from the transfer  
22 pursuant to Subsection A of this section for a class C county in  
23 which a state correctional facility is to be located, in the  
24 amount of the net receipts attributable to the local option  
25 gross receipts taxes imposed by that county on receipts from the

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1 construction of that facility. The amount deducted shall be  
2 distributed to the correctional facilities financing fund."

3 Section 6. Section 7-1-6.38 NMSA 1978 (being Laws 1994,  
4 Chapter 145, Section 1, as amended) is amended to read:

5 "7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS  
6 TAX.--

7 A. A distribution pursuant to Section 7-1-6.1 NMSA  
8 1978 shall be made to the correctional facilities financing fund  
9 administered by the New Mexico finance authority in an amount  
10 equal to the net receipts attributable to the governmental gross  
11 receipts tax imposed on the receipts from operation of the New  
12 Mexico state lottery.

13 B. From the balance remaining after the distribution  
14 in Subsection A of this section of the net receipts attributable  
15 to the governmental gross receipts tax:

16 [~~A-~~] (1) a distribution pursuant to Section  
17 7-1-6.1 NMSA 1978 shall be made to the public project revolving  
18 fund administered by the New Mexico finance authority in an  
19 amount equal to seventy-five percent of that balance of the net  
20 receipts attributable to the governmental gross receipts tax;

21 [~~B-~~] (2) a distribution pursuant to Section  
22 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and  
23 natural resources department in an amount equal to [~~twenty-five~~]  
24 twenty-one and three-tenths percent of that balance of the net  
25 receipts attributable to the governmental gross receipts tax.

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1 [Forty] Forty-seven percent of the distribution is appropriated  
2 to the energy, minerals and natural resources department to  
3 implement the provisions of the New Mexico Youth Conservation  
4 Corps Act, and [~~sixty~~] fifty-three percent of the distribution  
5 is appropriated to the energy, minerals and natural resources  
6 department for state park and recreation area capital  
7 improvements, including the costs of planning, engineering,  
8 design, construction, renovation, repair, equipment and  
9 furnishings; and

10 (3) a distribution pursuant to Section 7-1-6.1  
11 NMSA 1978 shall be made to the public project revolving fund  
12 administered by the New Mexico finance authority in an amount  
13 equal to three and seven-tenths percent of that balance of the  
14 net receipts attributable to the governmental gross receipts  
15 tax. If the reduction made by this 1997 act to the distribution  
16 to the energy, minerals and natural resources department impairs  
17 the payment of debt service on bonds payable from the  
18 governmental gross receipts tax issued by the state park and  
19 recreation division of the energy, minerals and natural  
20 resources department prior to February 1, 1997, the New Mexico  
21 finance authority shall reserve so much of the distribution to  
22 the public project revolving fund made pursuant to this  
23 paragraph as needed to pay debt service on those bonds and shall  
24 then transfer the balance from the distribution pursuant to this  
25 paragraph monthly to the correctional facilities financing fund

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1 administered by the authority.

2 C. The state pledges to and agrees with the holders  
3 of any bonds or notes issued by the New Mexico finance authority  
4 or by the energy, minerals and natural resources department and  
5 payable from the net receipts attributable to the governmental  
6 gross receipts tax distributed to the New Mexico finance  
7 authority or the energy, minerals and natural resources  
8 department pursuant to this section that the state will not  
9 limit, reduce or alter the distribution of the net receipts  
10 attributable to the governmental gross receipts tax to the New  
11 Mexico finance authority or the energy, minerals and natural  
12 resources department; limit, reduce, alter or exempt any of the  
13 receipts of governmental entities subject to the governmental  
14 gross receipts tax; or limit, reduce or alter the rate of  
15 imposition of the governmental gross receipts tax until the  
16 bonds or notes together with the interest thereon are fully met  
17 and discharged or provision has been made for their full payment  
18 and discharge. The New Mexico finance authority and the energy,  
19 minerals and natural resources department are authorized to  
20 include this pledge and agreement of the state in any agreement  
21 with the holders of the bonds or notes. "

22  
23 Section 7. Section 7-9-3.2 NMSA 1978 (being Laws 1991,  
24 Chapter 8, Section 1, as amended) is amended to read:

25 "7-9-3.2. ADDITIONAL DEFINITION. -- As used in the Gross

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1 Receipts and Compensating Tax Act, "governmental gross receipts"  
2 means all receipts of the state [~~of New Mexico~~] or any agency,  
3 institution, instrumentality or political subdivision thereof  
4 from:

5 A. the sale of tangible personal property other than  
6 water from facilities open to the general public;

7 B. the performance of or admissions to recreational,  
8 athletic or entertainment services or events in facilities open  
9 to the general public;

10 C. refuse collection, refuse disposal or both;

11 D. sewage services; [~~and~~]

12 E. the sale of water by a utility owned or operated  
13 by a county, municipality or other political subdivision of the  
14 state; and

15 F. the operation of a lottery.

16 "Governmental gross receipts" includes receipts from the  
17 sale of tangible personal property handled on consignment when  
18 sold from facilities open to the general public but excludes  
19 cash discounts taken and allowed, governmental gross receipts  
20 tax payable on transactions reportable for the period and any  
21 type of time-price differential."

22 Section 8. NEW MEXICO FINANCE AUTHORITY--PUBLIC PROJECT  
23 APPROVAL. --Pursuant to the provisions of Section 6-21-6 NMSA  
24 1978, the legislature authorizes the New Mexico finance  
25 authority to issue and sell revenue bonds in installments or at

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1 one time in an amount not to exceed fifteen million dollars  
2 (\$15,000,000) payable solely from the public project revolving  
3 fund for the design, construction and equipping of state  
4 correctional facilities in Lea and Guadalupe counties on terms  
5 and conditions established by the authority when the corrections  
6 department certifies the need for the issuance of the bonds,  
7 subject to the prior issuance of the bonds authorized in  
8 Sections 9 and 10 of this act for those facilities. The net  
9 proceeds from the sale of the bonds are appropriated to the  
10 corrections department for the design, construction and  
11 equipping of state correctional facilities in Lea county and  
12 Guadalupe county, subject to the provisions and requirements in  
13 Section 9 of this act for those facilities.

14 Section 9. NEW MEXICO FINANCE AUTHORITY--REVENUE BONDS--  
15 PURPOSE--APPROPRIATION OF PROCEEDS. --

16 A. The New Mexico finance authority may issue and  
17 sell revenue bonds, payable solely from the correctional  
18 facilities financing fund, in compliance with the provisions of  
19 the New Mexico Finance Authority Act in installments or at one  
20 time in an amount not to exceed twenty-nine million dollars  
21 (\$29,000,000) for the purpose of financing the design,  
22 construction and equipping of state correctional facilities in  
23 Lea county and Guadalupe county, including payment of costs of  
24 issuance of the bonds and establishing necessary reserves for  
25 the bonds, when the corrections department certifies the need

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1 for the issuance of the bonds and the requirements of  
2 Subsections C and D of this section have been met.

3 B. Twenty-six million dollars (\$26,000,000) of the  
4 net proceeds from the bonds are appropriated to the corrections  
5 department to design, construct and equip:

6 (1) a correctional facility of not more than  
7 eight hundred beds that is located in Guadalupe county and built  
8 with the necessary infrastructure to accommodate one thousand  
9 two hundred beds; and

10 (2) a correctional facility of not more than  
11 one thousand six hundred beds that is located in Lea county and  
12 built with the necessary infrastructure to accommodate two  
13 thousand two hundred beds.

14 C. Each county or political subdivisions in the  
15 county in which a correctional facility is to be located  
16 pursuant to Subsection B of this section shall provide land for  
17 the facility site and arrange for utilities, roads and related  
18 infrastructure needs to the property line of the prison site in  
19 the form of in-kind contributions. In addition, the city of  
20 Hobbs and Lea county shall each contribute five million dollars  
21 (\$5,000,000) in local matching funds for the state correctional  
22 facility project in Lea county, which shall be deposited into  
23 the correctional facilities financing fund.

24 D. The bonds authorized in Subsection A of this  
25 section and in Section 10 of this act for state correctional

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1 facilities in Lea county and Guadalupe county shall not be  
2 issued until the corrections department has certified that  
3 neither of the facilities shall be constructed unless both of  
4 the facilities are constructed, as nearly as practicable,  
5 simultaneously.

6 Section 10. SEVERANCE TAX BONDS--PURPOSE--APPROPRIATION OF  
7 PROCEEDS.--The state board of finance shall issue and sell  
8 severance tax bonds in compliance with the Severance Tax Bonding  
9 Act in an amount not to exceed seventy million dollars  
10 (\$70,000,000) when the corrections department certifies the need  
11 for the issuance of the bonds. The state board of finance shall  
12 schedule the issuance and sale of the bonds in the most  
13 expeditious and economical manner possible upon a finding by the  
14 board that the project has been developed sufficiently to  
15 justify the issuance and that the project can proceed to  
16 contract within a reasonable time. The state board of finance  
17 shall further take the appropriate steps necessary to comply  
18 with the Internal Revenue Code of 1986, as amended. The  
19 proceeds from the sale of the bonds are appropriated to the  
20 corrections department for the design, construction and  
21 equipping of state correctional facilities in Lea county and  
22 Guadalupe county, subject to the requirements and provisions for  
23 those facilities in Section 9 of this act. Any unexpended or  
24 unencumbered balance remaining six months after completion of a  
25 project shall revert to the severance tax bonding fund. If the

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1 corrections department has not certified the need for the  
2 issuance of the bonds by the end of fiscal year 1999, the  
3 authorization provided in this section shall be void.

4 Section 11. REPEAL. --Laws 1995, Chapter 214, Section 2 is  
5 repealed.

6 Section 12. EFFECTIVE DATE. --

7 A. The effective date of the provisions of Sections  
8 4, 5 and 7 of this act is July 1, 1997.

9 B. The effective date of the provisions of Sections  
10 3 and 6 of this act is August 1, 1997.

11 Section 16. EMERGENCY. --It is necessary for the public  
12 peace, health and safety that this act take effect immediately.